Supreme Court, U. S.
FILED
DEC 28 1976
MICHAEL RODAK, JR., CLERK

Supreme Court of the United States

OCTOBER TERM 1976

NO. 76-891

JOHN T. CHAMBERS,

Petitioner,

v.

Charles A. Chambers, Grace Chambers Killingsworth, Carl Andrew Chambers and The State of Texas,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TEXAS

PHILIP R. RUSS
621 Meadows Building
Dallas, Texas 75206
and
WILLIAM C. ODENEAL, JR.
621 Meadows Building
Dallas, Texas 75206

Of Counsel:
C. CLINT ADAMS, ESQ.

INDEX

Page

Opinions Below 2
Jurisdiction 2
Questions Presented 3
Statutes Involved 4
Statement 4
Argument 7
Conclusion 11
Certificate 15

APPENDIX A
Judgment A-1

APPENDIX B
Opinion B-1

APPENDIX C
Supreme Court of Texas
Overrule Application for Writ C-1

APPENDIX D
Supreme Court of Texas
Acknowledge-Motion for Rehearing D-1

APPENDIX E
Supreme Court of Texas
Motion for Rehearing Overruled E-1

APPENDIX F
List of Authorities F-1

TABLE OF AUTHORITIES

CASES

Biggers v. Continental Bus System, 157 Tex. 351, 298 SW 2d 79, 303 SW 2d 359, 363, (1957)

C & R Transport, Inc. v. Campbell, Sup. Ct. of Texas, 1966, 406 SW 2d 191

Cartwright v. Canode, 106 Tex. 502, 71 SW 696, 698 (1914)

Crump v. Andress, (Comm. of App. of Texas, 1925) 278 SW 422

Humphreys v. Edwards, 89 Tex. 512, 36 SW 333 (Sup. Ct. of Texas)

Hutto v. Cook (1942), 164 SW 2d 513

Supreme Court of the United States

OCTOBER TERM 1976

NO. .....

JOHN T. CHAMBERS,

Petitioner,

v.

Charles A. Chambers, Grace Chambers Killingsworth, Carl Andrew Chambers and The State of Texas,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TEXAS

JOHN T. CHAMBERS, your Petitioner, prays that a Writ of Certiorari issue to review the Judgment of the Supreme Court of the State of Texas in denying Petitioner's Application for Writ of Error and reviewing the Judgment and Opinion of the Court of Civil Appeals for the Second Supreme Judicial District Sitting at Fort Worth, Texas, which said Judgment and Opinion of said Court of Civil Appeals was entered in the above cause on March 19, 1976, Motion for Rehearing was duly filed

therein and overruled on the 16th day of April, 1976, and Application for Writ of Error was duly filed with the Supreme Court of Texas and the Application for Writ of Error of John T. Chambers was refused, no reversible error on July 21, 1976, Motion for Rehearing was duly filed on August 4, 1976, and overruled on September 29, 1976.

OPINIONS BELOW

The Opinion of the Court of Civil Appeals for the Second Supreme Judicial District of Texas Sitting at Fort Worth, Texas, (infra, Appendix B, Page B-1) is not reported in the Southwestern Reporter as is indicated in the last page of said Opinion the Court provided same was not for publication pursuant to Rule 452 of the Texas Rules of Civil Procedure (infra, Appendix F, Page F-1). The judgment of the Trial Court, 67th Judicial District Court of Tarrant County, Texas was signed and entered on the 30th day of October, 1974 (infra, Appendix A, Page A-1), which is likewise unreported.

JURISDICTION

The Judgment of the Supreme Court of the State of Texas in denying the Application for Writ of Error of

John T. Chambers was entered on July 21, 1976 (infra, Appendix C, Page C-1) whereby the Application for Writ of Error was refused. No reversible error. A Motion for Rehearing timely filed (infra, Appendix D, Page D-1) was overruled on September 29, 1976 (infra, Appendix E, Page E-1). The jurisdiction of this Court is invoked under the provisions of 28 U.S.C.A., Section 1257(3).

QUESTIONS PRESENTED

(1) Did the refusal of the Supreme Court of the State of Texas in refusing to grant Petitioner's, John T. Chambers', Application for Writ of Error and overruling his First Point of Error, which reads as follows:

> "The Court of Civil Appeals erred as a matter of law in considering adverse evidence to Respondents' position when the test and requirement of the Court of Civil Appeals is to totally ignore all adverse evidence and consider only the evidence in the record to support the jury's findings when the Trial Court has granted a Motion for Judgment Non Obstante Veredicto in part and disregarding Special Issue findings by the Jury."

deprive Petitioner of his right to due process of law guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution?

(2) Did the refusal of the Supreme Court of the State of Texas to grant Petitioner's Application for Writ of Error, which reads as follows:

> "The Court of Civil Appeals erred as a matter of law in holding that a life tenant cannot claim adversely to the remaindermen in a trespass to try title suit,"

operate to deprive Petitioner of his right to due process of Law guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution?

(3) Did the action of the Supreme Court of the State of Texas, in denying the Application for Writ of Error of your Petitioner, John T. Chambers, deny your Petitioner, John T. Chambers, his right to trial by jury as guaranteed by the Texas Constitution and the United States Constitution operate to deprive Petitioner of his right to a jury trial and deny him due process of law as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States in disregarding the findings of the Jury and entering a Judgment contrary thereto?

STATUTES INVOLVED

The Statutes involved are set out in Appendix "F" (infra, Page F-1), being the Fifth Amendment, the Fourteenth Amendment, Section 1, and Article IV, Section 1, of the United States Constitution.

STATEMENT

This case is one in which Grace Chambers Killingsworth, Carl Andrew Chambers, Charles A. Chambers, Peggy Chambers Noblin, JoAnn Skinner, and Carol Lee Chambers Smith (the latter three have not been a part to any of the appellate proceedings) filed suit against John T. Chambers in the 67th Judicial District Court of Tarrant County, Texas for partition of real estate in said County, alleging Plaintiffs and Defendant as owners in fee simple thereof. Petitioner (Defendant and Cross-Plaintiff in the Court below), individually and as Independent Executor of the Estate of Carl N. Chambers, Sr., Deceased, (Petitioner's father), filed his Answer and Cross-Action denying that the Plaintiffs, Cross-Defendants, had any interest in and to the subject property (hereinafter the Mansfield Farm), and alleging that he was, and still is, the owner in fee simple of the real property made the subject of the suit in its entirety, alleging three, five, ten and twenty-five year statutes of limitation, claiming title to the property by adverse possession to all parties. The State of Texas is involved insofar as 14.767 acres are claimed to be a vacancy by the State of Texas, involved in the overall 140 acre tract, to-wit, the Mansfield Farm. Upon a verdict on Special Issues, the Jury awarded fee simple title to your Petitioner herein, John T. Chambers, to the entire tract by adverse possession and found the vacancy alleged by the State of Texas not to be included in the overall tract of property. (Infra, Appendix A, Page A-1, et seq).

The District Court rendered Judgment in disregarding the Jury's Special Issue findings as to Special Issues Nos. 3-A, 7, 8, 9, 11 and 12, (infra, Appendix A, Pages A-2 through A-7) and overruled in part and sustained in part the Motion for Judgment on the Verdict of Petitioner herein and overruled and sustained in part the Motions for Judgment Non Obstante Veredicto of the Respondents.

The Opinion of the Court of Civil Appeals incorrectly states certain evidentiary matters and facts and cites as probative evidence, evidence offered by your Petitioner in the form of Bill of Exception, which was never presented to nor before the Jury.

The entire record is devoid of any evidence that Carl N. Chambers, Sr. ever divorced Minnie M. Chambers, or was there any evidence that he later, or at any time, married Lillian Chambers, although this fact is apparently assumed in the Opinion of the Court of Civil Appeals. The Court of Civil Appeals in its Opinion (infra, Appendix B, Page B-13) recites "...all the remainder interest in the land involved here was subject to a life estate for the life of Carl Chambers, Sr. That life estate did not end until Carl Chambers died on September 8, 1970" which ignores the findings of the Jury and further ignores that Carl N. Chambers, Sr. and John T. Chambers in privy with him were co-tenants and co-remaindermen with the other parties to the subject litigation, and such a ruling of

the Court ignores ouster on the part of John T. Chambers, individually and in privy with his father, Carl N. Chambers, Sr., now deceased. Your Petitioner herein offered testimony, in certain occasions which was elicited upon cross-examination by the Respondent, with respect to the adverse holding of John Chambers and his deceased father, Carl N. Chambers, Sr., to all parties of the subject property. The entry of a Judgment Non Obstante Veredicto in part by the Court in the face of evidence introduced by all parties in support of Petitioner's position denies your Petitioner his right to trial by jury as guaranteed by the Texas Constitution and the United States Constitution.

Hence, this appeal.

ARGUMENT

The point of Petitioner's appeal to the Court of Civil Appeals, his Application for Writ of Error and his Motions for Rehearing in both the Court of Civil Appeals and the Supreme Court of the State of Texas relate to the fact that evidence was introduced to support his position, the Jury answered Special Issues finding in his favor, which were disregarded by the Trial Court, and a Judgment Non Obstante Veredicto granted and total fee simple title to the subject property was denied your Petitioner. The Court of Civil Appeals in affirming the

Trial Court and the Supreme Court of the State of Texas in denying Petitioner's Application for Writ of Error totally ignore a long line of both historic and recent decisions of the Supreme Court of the State of Texas standing for the proposition that upon review of a granting of a Motion for Judgment Non Obstante Veredicto when having been granted either in whole or in part the Appellate Court must totally ignore all evidence contrary to that portion of the Judgment entered by the Trial Court contrary to the Jury's findings and search the record in an effort to determine whether or not there is any evidence whatsoever, even so much as a scintilla, to support the findings of the Jury. There are numerous Texas Supreme Court decisions, but specifically Petitioner would cite the case of *C & R Transport, Inc. v. Campbell,* Sup. Ct. of Texas, 1966, 406 SW 2d, 191, which states as follows:

> "(2) But the testimony of the Plaintiff is not the only testimony bearing on the issues. *To test whether the Trial Court erred in holding that the answers to the issues have no support in the evidence, we must consider only the evidence and the reasonable inferences therefrom, which support the answers. Biggers v. Continental Bus System,* 157 Tex. 351, 298 SW 2d 79, 303 SW 2d, 359, 363, (1957); *Cartwright v. Canode,* 106 Tex. 502, 71 SW 696, 698 (1914)...." (Emphasis added).

The Texas Supreme Court and the Texas Court of Civil Appeals for the Second Supreme Judicial District Sitting at Fort Worth failed completely to recognize and/or

apply thereon long standing rules as set forth in the *C & R Transport, Inc. v. Campbell* case. The Court of Civil Appeals in its Opinion (infra, Appendix B, Page B-1) even recites certain matters contrary to the holding of *C & R Transport* in support of its Opinion, specifically Defendants' Exhibit 40, a letter to Texas Electric Service Company, (infra, Appendix B, Page 11).

If the Rule is to remain inviolate that the Jury is to be the one who determines the facts, the Courts of Texas should not now take it upon themselves to invade the Jury's province and determine that the Jury, who has the benefit of the demeanor and countenance of the witnesses and the inflection of their voices during testimony, and disregard that system which has worked so well, so long and superimpose the stilted ruling of the Court of what it deems should have been the ruling notwithstanding the finding of the Jury. Such a ruling makes one wonder what is the purpose of a Jury anyway.

The general rule is basically that the statute of limitations does not run against a life tenant for adverse possession to property. Petitioner does not quarrel with this general Rule, however, Respondents' position generally ignores those instances in which the life estate can or has been repudiated, *ouster,* if you will, such as that of *Crump v. Andress,* (Comm. of App. of Texas, 1925) 278 SW 422, and *Humphreys v. Edwards,* 89 Tex. 512, 36 SW 333, (Sup. Ct. of Texas) are exceptions to that

general Rule. The case at bar is likewise an exception to that general Rule and for that reason alone, Petitioner's Writ of Certiorari to the Supreme Court of Texas should be granted. In fact, in the case at bar, the Jury found not only facts to support a favorable answer to a Special Issue finding or findings, as they relate to adverse possession in favor of your Petitioner, John T. Chambers, but, in fact, likewise found in a separate Special Issue that John T. Chambers had, in fact, in privy with his father, *ousted* those others and in effect thereby repudiated an alleged life estate. (Emphasis added). If the instant case is allowed to stand, the province of the Jury is surely invaded and the Constitutional rights of due process of law as guaranteed by the Texas Constitution and the Fifth and Fourteenth Amendments to the Constitution of the United States of America have surely been violated. In particular, the *Crump v. Andress* case (Comm. of App. of Texas, 1925) 278 SW 442 at 424 with respect to whether or not a person may repudiate the limited estate in real property with respect to those in privy with that person and start the running of the statute of limitations, stating as follows:

> "(2) As stated by the Court in the *Edwards case,* the act must be openly hostile and must, in some way, directly or otherwise be brought home to the attention of those adversely interested. In other words, until notice is actually brought home to them, we think they will be justified in assuming

> that possession, begun under a homestead claim would so continue, in whole or in part, *but they cannot shut their eyes or close their ears to the notice that the claim under the homestead right is being abandoned and repudiated.*" (Emphasis added).

The same situation exists in the case at bar. None of the parties to the case at bar nor apparently does the Court of Civil Appeals or the Supreme Court of Texas deny the fact that there is evidence to support that the purported life estate of Carl N. Chambers, Sr., Deceased, was repudiated during his lifetime, the Appellate Court simply states that there was no "probative evidence", whatever that means. The Respondents admit that there is only the testimony of Petitioner to support such a claim. The point is, the Jury had the benefit of weighing that evidence and choosing whom to believe and believed your Petitioner. The Court Of Civil Appeals and the Supreme Court of Texas have also ignored the prior ruling of the Texas Supreme Court in the case of *Hutto v. Cook*, (1942), 164 SW 2d 513, with a regard to "Privity of estate".

CONCLUSION

The Court of Civil Appeals for the Second Supreme Judicial District Sitting in Fort Worth and the Supreme Court of Texas have no legitimate reason for refusing to follow their own prior decisions. There was and is evi-

dence introduced in the record to support the findings of the Jury and there is absolutely no basis whatsoever in fact or in law for the Appellate Courts of the State of Texas to sanction the ruling of the Trial Judge in disregarding the Special Issue findings of the Jury.

The State of Texas, acting through is agents, the Supreme Court of Texas, the Court of Civil Appeals for the Second Supreme Judicial District of Texas Sitting at Fort Worth, Texas, and the District Judge, the Honorable Clyde Ashworth, Judge of the 67th District Court of Tarrant County, Texas, each and all have individually and collectively violated the Petitioner's Constitutional rights in the particulars hereinbefore set forth. Petitioner submitted his case to a Jury in Tarrant County, Texas, prevailed and the Trial Court and Appellate Court have seemingly sought out methods to substantiate a result they felt they wanted to reach notwithstanding the fact that it did not comport with the prior cases decided by the same Courts.

In any event, the Judgment should have been entered on the verdict rendered by the Jury awarding the entire Mansfield Farm in fee simple absolute to the Petitioner, John T. Chambers.

Respectfully submitted,

PHILIP R. RUSS
621 Meadows Building
Dallas, Texas 75206
and
WILLIAM C. ODENEAL, JR.
621 Meadows Building
Dallas, Texas 75206

BY _____
PHILIP R. RUSS

Of Counsel:
C. CLINT ADAMS, ESQ.

CERTIFICATE

The undersigned hereby certifies that copies of the above and foregoing Petition for Writ of Certiorari to the Supreme Court of the State of Texas have this day been served upon counsel for the Respondents by depositing same in the United States mail, with sufficient postage affixed, addressed as follows:

Oscar E. Reed, Esq.
12903 Tosca
Houston, Texas 77024

G.P. Reddell, Jr., Esq.
612 Sixth Avenue North
Texas City, Texas 77590

Obel L. McAlister, Esq.
3613 Overton Park East
Fort Worth, Texas 76109

Scott Garrison, Esq.
Assistant Attorney General
P.O. Box 12548
Capitol Station
Austin, Texas

Gerald Summerford, Esq.
200 West Belknap
Fort Worth, Texas 76102

William M. Jones, Esq.
812 Dresser Building
Dallas, Texas 75202

DATED AND SIGNED this _____ day of December, 1976 at Dallas, Texas.

PHILIP R. RUSS

APPENDIX "A"

NO. 67 - 4857 - 70

GRACE CHAMBERS KILLINGSWORTH, ET AL.	)	IN THE DISTRICT COURT
	)	TARRANT COUNTY, TEXAS
VS.	)	
JOHN T. CHAMBERS	)	67TH JUDICIAL DISTRICT

JUDGMENT

ON THE 17th day of June, A.D. 1974, came on to be heard the above entitled cause, and came all parties either in person, or by and through their attorney, and came a jury of twelve (12) good and lawful men and women, who being duly empaneled and sworn and having heard the pleadings, the evidence and arguments of counsel, on their oaths do for their verdict in response to the following Special Issues submitted to them by the Court on the 2nd day of July, A.D. 1974, make the following respective findings:

"SPECIAL ISSUE NO. 1.

Do you find from a preponderance of the evidence that the Mansfield Farm involved herein cannot be partitioned in kind:

Answer "It cannot" or "It can."

Answer: "It can".

You are instructed that "partition in kind" has the following meaning:

To divide the farm itself into two or more parcels of appropriate value.

SPECIAL ISSUE NO. 2.

Do you find from a preponderance of the evidence that Carl N. Chambers, Sr., did not sign the deed of December 15, 1964, to the Plaintiffs', JoAnn Skinner, Carol Lee Smith and Peggy Louise Chambers Noblin?

Answer "He did not," or "He did."

Answer: "He did not".

SPECIAL ISSUE NO. 3.

Do you find from a preponderance of the evidence that prior to November 25, 1970, John T. Chambers made improvements to the Mansfield Farm that increased the value of the property as a whole?

Answer "Yes" or "No."

Answer: "Yes".

SPECIAL ISSUE NO. 3-A

If you have answered Special Issue No. 3 above "Yes," and only in that event, then answer this question.

Find from a preponderance of the evidence the reasonable value of the increase in the value of the farm itself by virtue of such improvements, if any, made by John T. Chambers prior to November 25, 1970.

Answer in dollars and cents, if any.

Answer: $50,000.00.

There are no Special Issue No.4 or Special Issue No. 5 in this case.

SPECIAL ISSUE NO. 6.

Do you find from a preponderance of the evidence that two or more persons, including but not

limited to one or one or more of the Plaintiffs, Charles Albert Chambers, Grace Chambers Killingsworth, Carl Andrew Chambers, JoAnn Skinner, Carol Lee Smith, Peggy Louise Chambers (Noblin) and Obel L. McAlister conspired to defeat the personal and/or property rights of the Defendant and Cross-Plaintiff, John T. Chambers?

Answer "Yes" or "No."

Answer: "No."

In answering the foregoing question, you are instructed that "conspiracy" shall mean an agreement between two or more persons to do a wrongful thing or to do a lawful thing in a wrongful manner.

SPECIAL ISSUE NO. 6-A:

If you have answered Special Issue No. 6 "Yes," and only in that event, then answer this question.

Which of the following persons do you find from a preponderance of the evidence to have been members of the conspiracy?

Answer "Yes" or "No" for each name.

_____Charles A. Chambers
_____Grace Chambers Killingsworth
_____Carl Andrew Chambers
_____Jo Ann Skinner
_____Carol Lee Smith
_____Peggy Louise Noblin
_____Obel L. McAlister

SPECIAL ISSUE NO. 6-B:

If you have answered the preceding Special Issue No. 6-A in the affirmative, and only in that

event, then answer this question.

What sum, if any, if paid now in cash, do you find from a preponderance of the evidence will fairly compensate the Defendant and Cross-Plaintiff, John T. Chambers, for the damage by him sustained, if any, as a result of the conspiracy to defeat his personal and/or property rights.

Answer in dollars and cents, if any.

Answer: _____

You are instructed that you may consider in computing the damages, if any, the evidence, if any, of loss of freedom, mental pain and suffering, physical pain and suffering, mental anguish, scorn, contempt, loss of business, loss of profits, personal injury, loss of standing in the community and alienation of affections of the immediate family.

You are further instructed that you may consider in computing the damages, if any, the impairment of the right to mortgage, sell, lease, develop, further improve, subdivide, build, and make the best use of the Mansfield Farm.

SPECIAL ISSUE NO. 6-C.

If you have answered Special Issue No. 6 "Yes," and only in that event, then answer this question.

Do you find from a preponderance of the evidence that the Defendant and Cross-Plaintiff, John T. Chambers, is entitled to exemplary damages against the Plaintiffs?

Answer"Yes" or "No."

Answer: _____

You are instructed that to entitle the Defendant and Cross-Plaintiff, John T. Chambers, to exemplary damages, you must believe and find

from a preponderance of the evidence that the Plaintiffs and/or their agents acted and were actuated by some evil intent or with such willful, wanton and reckless disregard for the rights of Defendant and Cross-Plaintiff, John T. Chambers, as is equivalent to an evil intent.

SPECIAL ISSUE NO. 6-D.

If you have answered Special Issue No. 6-C "Yes," and only in that event, then answer this question.

What sum of money, if any do you assess from a preponderance of the evidence as exemplary damages.

You are instructed that exemplary damages may be assessed as a result of a wrongful act or acts done, if any, if the acts warrant the same. Exemplary damages may be awarded as a penalty, or punishment, against a person or persons who have been guilty of wrongful conduct. In assessing the amount of exemplary damages, if any, you may consider the amount incurred by the aggrieved party as attorney's fees. The amount to be fixed, if any, is in the sound discretion of the jury, and must be in proportion to the amount of actual damages, if any.

Answer in dollars and cents, if any.

Answer: _____

SPECIAL ISSUE NO. 7.

Do you find from a preponderance of the evidence that John T. Chambers, either himself or with Carl N. Chambers, Sr., or through a tenant, held peaceable and adverse possession of the Mansfield Farm under title or color of title for a

continuous period three years, or longer, prior to November 25, 1970?

Answer "Yes" or "No."

Answer: "Yes."

SPECIAL ISSUE NO. 8.

Do you find from a preponderance of the evidence that John T. Chambers, either himself or with Carl N. Chambers, Sr., or through a tenant, or tenants, held exclusive peaceable and adverse possession of the Mansfield Farm cultivating, using or enjoying the same and paying taxes thereon and claiming under a deed or deeds duly registered for any consecutive period of five years prior to November 25, 1970?

Answer "Yes" or "No."

Answer: "Yes."

SPECIAL ISSUE NO. 9.

Do you find from a preponderance of the evidence that John T. Chambers, either himself or with Carl N. Chambers, Sr., or through a tenant or tenants held exclusive peaceable and adverse possession of the Mansfield Farm cultivating, using or enjoying the same for any period of ten consecutive years or longer prior to November 25, 1970?

Answer "Yes" or "No."

Answer: "Yes."

SPECIAL ISSUE NO. 10.

Do you find from a preponderance of the evidence that John T. Chambers held peaceable and adverse possession in good faith and under claim of right in himself or in himself and those under whom he claims in privity with Carl N. Chambers,

Sr., of the Mansfield Farm involved in this suit under an instrument purporting to convey the Mansfield Farm and said instrument being recorded in the Deed Records of Tarrant County, Texas, for a period of 25 years or longer prior to November 25, 1970?

Answer "Yes" or "No."

Answer: "No."

If you have answered "yes" to SPECIAL ISSUES NO.'S 7, 8, 9 or 10, then answer 11 and 12, otherwise do not answer same.

SPECIAL ISSUE NO. 11.

Do you find from a preponderance of the evidence in this case that the Plaintiffs herein, Charles Albert Chambers, Grace Chambers Killingsworth and Carl Andrew Chambers knew that the Defendant and Cross-Plaintiff, John T. Chambers, was claiming the Mansfield Farm in controversy in this suit adverse to them?

Answer "Yes" or "No."

Answer: "Yes."

SPECIAL ISSUE NO. 12.

Do you find from a preponderance of the evidence in this case that the Plaintiffs herein, JoAnn Skinner, Carol Lee Smith, and Peggy Louise Chambers (Noblin), knew that the Defendant and Cross-Plaintiff, John T. Chambers, was claiming the Mansfield Farm in controversy in this suit adverse to them?

Answer "Yes" or "No."

Answer: "Yes."

SPECIAL ISSUE NO. 13.

Do you find from a preponderance of the evidence that the 14.62 acres of land shown by State's Exhibit No. 1 was included in the description of the B.R. Abbott Survey as shown in Defendant's Exhibit No. 74?

Answer "It was included" or "It was not included."

Answer: It was not included.

Which findings and verdict were not unanimous, but were duly signed by those jurors rendering the verdict as follows, to-wit:

Alma R. Moore
Dixie Pirtle Sears
Carol R. Davis
Alfons A. Knapp
Billie Jean Bruce
Nancy K. Summers
Frances W. Neal
John R. Sondergegger
James S. Dozier
Billy W. McCullar
Glenda M. Long

Which findings and verdict were received by the Court after the jury had been duly polled on the 3rd day of July, A.D. 1974, and were filed and entered of record in the Minutes of the Court;

WHEREUPON, the Defendant and Cross-Plaintiff, JOHN T. CHAMBERS, having made a Motion for Judgment upon the Verdict and the Plaintiffs and each of them having made a Motion for Judgment, Non Obstante Verdicto, and the Court having duly heard and considered said Motions, and the Court being of the opinion that Defendant and Cross-Plaintiff, JOHN T. CHAMBER'S Motion for Judgment should be and is hereby OVERRULED in part and SUSTAINED in part, Motions Non Obstante Verdicto of GRACE CHAMBERS KILLINGSWORTH, CARL ANDREW CHAMBERS, CHARLES A. CHAMBERS, JOANN SKINNER, CAROL LEE SMITH and PEGGY LOUISE CHAMBERS NOBLIN, and each of them, should be and are hereby OVERRULED in part and SUSTAINED in part in that the findings of the jury to Special Issues Numbers 3-A, 7, 8, 9, 11 and 12 are not supported by the evidence and that such findings are so contrary to the greater weight and degree of the credible testimony and evidence in this case as to be manifestly unjust and unfair and the same are hereby disregarded, and the Motion for Mistrial of JOANN SKINNER, CAROL LEE SMITH and PEGGY LOUISE CHAMBERS NOBLIN, and each of them, is hereby OVERRULED, and the Court being of the opinion that Judgment should be rendered as follows for the Plaintiffs and for the Defendant and Cross-Plaintiff, JOHN T. CHAMBERS, to-wit:

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the Motion for Judgment upon the Verdict is OVERRULED in part and SUSTAINED in part and that the Motions for Judgment Non Obstante Verdicto of the Plaintiffs, and each of them, are OVERRULED in part and SUSTAINED in part, in that the jury's special issue findings to Special Issues Numbers 3-A, 7, 8, 9, 11 and 12, and each of them, are herewith disregarded by the Court, and the Motion for Mistrial of JOANN SKINNER, CAROL LEE SMITH and PEGGY LOUISE CHAMBERS

NOBLIN is OVERRULED.

The Court further finds that it has heretofore granted Motions for Directed Verdict in part of the Defendant and Cross-Plantiff, JOHN T. CHAMBERS, as to the claim of the Plaintiff and Cross-Defendants, GRACE CHAMBERS KILLLINGSWORTH, CARL ANDREW CHAMBERS, CHARLES A. CHAMBERS, PEGGY CHAMBERS NOBLIN, JOANN CHAMBERS SKINNER and CAROL LEE CHAMBERS SMITH, and each of them who are individuals, as to their suit for accounting and for the affirmative relief sought in conjunction therewith in the Plaintiffs' Second Amended Original Petition filed herein and joined herein by all parties, and it is herewith EXPRESSLY DENIED as to their suit for an accounting.

The Court, in accord with the jury's Special Issue finding to Special Issue #1, enters Judgment that the said Mansfield farm can be partitioned in kind, it is,

THEREFORE, ORDERED, ADJUDGED AND DECREED that the Mansfield farm be partitioned in kind in accord with the provisions hereinafter of this Judgment.

The Court further finds after disregarding the aforementioned Special Issues and findings of the jury, that Plaintiff, GRACE CHAMBERS KILLINGSWORTH and her son, CARL ANDREW CHAMBERS, be and they are hereby awarded an undivided One-fourth (¼th) interest, and the Plaintiff, CHARLES A. CHAMBERS, should be and is hereby awarded an undivided One-Fourth (¼th) interest and Defendant and Cross-Plaintiff, JOHN T. CHAMBERS, should be and is hereby awarded an undivided One-fourth (¼th) interest individually and an undivided One-fourth (¼th) interest as Independent Executor of the Estate of CARL N.

CHAMBERS, SR., in and to the subject property as owners thereof in fee.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that Plaintiff and Cross-Defendants, GRACE CHAMBERS KILLINGSWORTH and CARL ANDREW CHAMBERS, be and they are hereby awarded an undivided One-fourth (¼th) interest, the Plaintiff and Cross-Defendant, CHARLES A. CHAMBERS, is hereby awarded an undivided One-fourth (¼th) interest and the Defendant and Cross-Plaintiff, JOHN T. CHAMBERS, is individually awarded an undivided One-fourth (¼th) interest and as Independent Executor of the Estate of CARL N. CHAMBERS, SR. is hereby awarded an additional undivided One-fourth (¼th) interest of title in and to with rights to full possession for their respective interests as owner in fee simple of the following described real estate situated in Tarrant County, State of Texas, to-wit:

All that certain tract or parcel of land lying and being situated in the County of Tarrant, State of Texas, to-wit:

FIRST TRACT: 41 acres of the B.R. ABBOTT SURVEY and 15 acres of the W.H. CURRY SURVEY in Tarrant County, Texas.

BEGINNING at the Northeast corner of the W. H. CURRY SURVEY.
THENCE North 324 varas to B.R. ABBOTT'S North line.
THENCE West 715 varas.
THENCE South 442 varas.
THENCE East 715 varas.
THENCE North 118 varas to the place of BEGINNING.

SECOND TRACT: 65 acres out of the W.H. CURRY SURVEY, A.D. HEDENBURG AND B.R. ABBOTT SURVEYS in Tarrant County, Texas.

BEGINNING at the S.W. corner of the B.R. ABBOTT SURVEY.
THENCE North 110 varas.
THENCE East 430 varas.
THENCE South 228 varas.
THENCE East 715 varas.
THENCE South 300 varas.
THENCE West 535 varas.
THENCE North 99 varas.
THENCE West 536 varas.
THENCE North 12 degrees West 333 varas to the place of BEGINNING.

THIRD TRACT: 22¾ acres of land out of the W.H. CURRY SURVEY and the A.D. HEDENBURG SURVEY in Tarrant County, Texas.

BEGINNING in the West line of the said CURRY SURVEY at the S.E. Corner of the A.D. HEDENBURG SURVEY.
THENCE South 253 varas.
THENCE North 60 East 450 varas.
THENCE East 120 varas.
THENCE North 140 varas.
THENCE West 536 varas.
THENCE South 12 East 140 varas to the place of BEGINNING.

SAVE AND EXCEPT the following described 14.767 acre tract:

BEGINNING at the Northwest Corner of the Effie G. Rumph Survey, Abstract 2042;

THENCE South 0 degrees 27 Minutes West 111.65 varas along West line of said E.G. Rumph to the Southwest Corner of Rumph Survey, a point in the North Line of the B.R. ABBOTT SURVEY, Abstract 13;

THENCE South 89 degrees 49 Minutes West 733.09 varas along the North line of said B.R. ABBOTT SURVEY to an "L" Corner of said Survey;

THENCE North 0 degrees 14 Minutes East 115.77 varas along the most Northerly East Line of the B.R. ABBOTT SURVEY to a point in the South Line of the David Russell Survey, Abstract 1323;

THENCE South 90 degrees 52 Minutes East 733.46 varas along the South Line of said David Russell Survey to the place of BEGINNING and containing 14.767 acres of land, more or less.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the State of Texas, by and through the Texas General Land Office, be and it is HEREBY AWARDED title and possession as prayed for in its Third Amended Original Answer and Counterclaim to the following described property which was never patented or severed from the State, to-wit:

BEGINNING at the Northwest Corner of the Effie G. Rumph Survey, Abstract 2042;

THENCE South 0 degrees 27 Minutes West 111.65 varas along West line of said E.G. Rumph to the Southwest Corner of Rumph Survey, a point in the North line of the B.R. ABBOTT SURVEY, Abstract 13;

THENCE South 89 degrees 49 Minutes West 733.09 varas along the North line of said B.R.

ABBOTT SURVEY to an "L" Corner of said Survey;

THENCE North 0 degrees 14 Minutes East 115.77 varas along the most Northerly East Line of the B.R. ABBOTT SURVEY to a point in the South Line of the David Russell Survey, Abstract 1323;

THENCE South 90 degrees 52 Minutes East 733.46 varas along the South Line of said David Russell Survey to the place of BEGINNING and containing 14.767 acres of land, more or less.

IT IS THE JUDGMENT of the Court that JOHN T. CHAMBERS take nothing on his Counterclaim as to the aforedescribed property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any and all funds heretofore deposited in the Registry of the Court in the condemnation action Number 153-7746-71, styled THE STATE OF TEXAS VS. JOHN T. CHAMBERS, ET AL, for said property previously condemned, a portion of which is in the property awarded the Plaintiffs and the Defendant and a portion of which is in the vacancy found by the jury, be and it is HEREWITH AND HEREBY AWARDED TO and should be disbursed from the Court's Registry to the respective Plaintiffs and Cross-Defendants and the Defendant-Cross-Plaintiff, JOHN T. CHAMBERS, and to the State of Texas in their respective portions.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Third Party Defendant, TARRANT COUNTY, TEXAS, be and is hereby DISMISSED WITH PREJUDICE from said suit and

that all parties take nothing as to the Third Party Defendant, TARRANT COUNTY, TEXAS.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that all the Court Costs herein be, and they are hereby taxed One-half (½) against the Plaintiffs and Cross-Defendants, PEGGY CHAMBERS NOBLIN, JOANN CHAMBERS SKINNER, CAROL LEE CHAMBERS SMITH, and each of them jointly and severally, and One-half (½) against JOHN T. CHAMBERS, Individually, for which the Clerk may have its execution.

The Court finds that JAMES W. YOUNG, DAN GOULD, JR. and BRITT PHILLIPS are resident citizens of Tarrant County, Texas, and are competent and disinterested persons;

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that they are hereby appointed as Commissioners to make a fair, equal, just and impartial partition of the land and premises herein described on Pages 12 and 13 of this Judgment as First Tract, Second Tract and Third Tract in the shares ordered the respective parties, by lot as determined by this Decree and at law, and when such partition is completed, to report the same in writing and under oath to this Court.

All relief prayed for and not herein specifically granted is specifically denied.

TO ALL OF WHICH the Defendant and Cross-Plantiff, JOHN T. CHAMBERS, duly excepted and gave his notice of appeal.

SIGNED AND ENTERED this the 30th day of October, A.D. 1974.

/s/ CLYDE ASHWORTH
CLYDE ASHWORTH, JUDGE
67th District Court
Tarrant County, Texas

APPENDIX "B"

NO. 17622

IN THE COURT OF CIVIL APPEALS FOR THE SECOND SUPREME JUDICIAL DISTRICT OF TEXAS

JOHN T. CHAMBERS, INDIVIDUALLY & AS INDEPENDENT EXECUTOR OF THE ESTATE OF CARL N. CHAMBERS, SR., DECEASED

Appellant

vs.

GRACE CHAMBERS KILLINGSWORTH, ET AL.

Appellees

From The District Court of Tarrant County

Opinion

The plaintiffs filed a partition suit alleging that the plaintiffs and the defendants were the owners of a 143 acre farm near Mansfield, Texas. The plaintiffs were Grace Chambers Killingsworth, Carl Andrew Chambers, Charles A. Chambers, Peggy Chambers Noblin, Jo Ann

Chambers Skinner, and Carol Lee Chambers Smith. John T. Chambers, in his individual capacity and in his capacity as Independent Executor of the Estate of Carl N. Chambers, Sr., deceased, was named as the defendant in that case.

By way of cross-action, John T. Chambers, in the two capacities mentioned, sued the plaintiffs in trespass to try title claiming that he was the sole owner of the entire tract of land involved. In addition to the plaintiffs, the cross-plaintiff named the State of Texas as a defendant in the trespass to try title suit. The State was made a party because it was contending that a tract of 14.767 acres adjoining the farm was not owned by the parties and that it was a vacancy, owned by the State of Texas, because it had never been patented out of the State.

A jury trial was had and after the jury returned its verdict the defendant, John T. Chambers, in his dual capacity, moved for a judgment on the verdict and the plaintiffs moved for a judgment notwithstanding the verdict. The trial court, in part, granted each of those motions and he denied each of them in part and rendered judgment as follows: Grace Chambers Killingsworth and her son, Carl Andrew Chambers, were decreed to be the owners of a ¼ interest in the farm; Charles A. Chambers was decreed to be the owner of a ¼ interest; and John T. Chambers, individually, was decreed to own a ¼ interest in the farm, and John T. Chambers, as independent executor of the estate of Carl N. Chambers, Sr., was decreed to own a ¼ interest in the farm. The judgment also awarded the fee simple title to the 14.767 acre tract, that was claimed to be a vacancy, to the State of Texas. Costs in the case were taxed one-half against John T. Chambers, individually, and one-half against Peggy Chambers Noblin, Jo Ann Chambers Skinner and Carol Lee Chambers Smith. The decree appointed commissioners and ordered them to partition the land in kind among those who were decreed to be joint owners.

The jury found in answer to Special Issue No. 2 that the deed under which Peggy Chambers Noblin, Jo Ann Chambers Skinner, and Carol Lee Chambers Smith claimed was a forgery. Because of that finding they were not decreed to be owners of an interest in the land involved. Those three parties have not appealed.

John T. Chambers filed an appeal bond and notice of appeal wherein he stated he "gives this his Notice of Appeal from and only from that portion of the Judgment entered against him whereby his Motion for Judgment on the Verdict was Overruled in Part and Sustained in Part and the findings of the jury to Special Issues Numbers 3-A, 7, 8, 9, 11 and 12 were disregarded by the Court and further from the Court's failure to disregard the jury's finding to Special Issue Number 13 pursuant to his Motion to Disregard same, and Defendant and Cross-Plaintiff, John T. Chambers, gives notice that the foregoing portions of the Judgment will be appealed within the time required by law . . . . "

John. T. Chambers contends that by filing notice of appeal in the form just indicated he turned this appeal into a limited appeal as provided for by Rule 353(c), T.R.C.P. The question of whether or not this is a limited appeal becomes quite important because Charles A. Chambers has filed herein some rather potent cross-points wherein he seeks to reverse that part of the trial court's decree that awards a ¼ interest to John T. Chambers, individually, and a ¼ interest to John T. Chambers as independent executor of the Carl N. Chambers, Sr. estate.

We affirm.

The parties to the suit are all related, either by blood or by marriage. The defendant, John T. Chambers and

the plaintiff, Charles A. Chambers, are brothers. Their parents were Carl N. Chambers, Sr. and Minnie Chambers. They had a full brother named Carl N. Chambers, Jr., who died in 1965. His wife at the time of his death was the plaintiff, Grace Chambers Killingsworth. Carl Andrew Chambers, one of the plaintiffs herein, is the son of Carl N. Chambers, Jr. and Grace Chambers Killingsworth. He is also the grandson of Carl N. Chambers, Sr. and Minnie Chambers. The plaintiffs, Jo Ann Chambers Skinner, Peggy Chambers Noblin, and Carol Lee Chambers Smith, are daughters of Carl N. Chambers, Sr. Their mother was Lillian Chambers. They are also half sisters of defendant, John T. Chambers, and the plaintiff, Charles A. Chambers.

We will here set out some of the undisputed facts in the case. The first marriage of Carl N. Chambers, Sr. was to Minnie Chambers in about 1912. They had three children of the marriage, namely, John T. Chambers (the defendant and cross-plaintiff), Charles A. Chambers (a plaintiff herein), and Carl N. Chambers, Jr., now deceased. Carl N. Chambers, Sr. and Minnie Chambers acquired the land in question in 1933, during their marriage, by purchase from J.W. and Sarah Doherty. The Dohertys at that time deeded the farm to Carl N. Chambers. On May 21, 1941, Carl N. Chambers executed a warranty deed conveying the land in question to his then wife, Minnie M. Chambers, as her sole and separate property. The deed recited that Minnie Chambers paid the consideration for same out of her separate estate. In this deed the grantor, Carl Chambers, Sr., reserved to himself a life estate in the farm. The deed also provided that the life tenant would make the payments on the existing farm mortgage, pay the taxes and insurance premiums and that if he failed to do so for ninety days after any such payment became due that the said Minnie

Chambers had the option to terminate the life estate. As a part of the same transaction in which the deed was executed Carl N. Chambers and wife, Minnie Chambers, did on May 21, 1941, also execute an agreement in writing that provided: that Chambers had executed the deed just referred to reserving a life estate in himself and reciting that this agreement was executed ancillary to the deed and in explanation of the part of the consideration for the deed recited therein as "other good and valuable considerations" and that as a part of the consideration for that deed Minnie agreed that she will provide in her will that all of this Mansfield farm will be devised to Carl N. Chambers, Sr., and the three children of those parties, namely, Carl N. Chambers, Jr., John T. Chambers and Charles A. Chambers, share and share alike. On December 23, 1944, John T. Chambers was in the army and on that date wrote his mother a letter (part of Dx. 43) requesting that she make her will so that he be left out of it and advising her, "In a couple of years everything will be okay and you can change it back, if you like." Pursuant to John T. Chambers' request his mother, Minnie Chambers did redraw her will, leaving him out of it and sent him a copy of the new will, at his request. John T. Chambers wanted the will drawn that way because he had become involved with a married woman and did not want to get his business mixed up. Minnie Chambers thereafter died in 1959 without ever rechanging her will to again include John T. Chambers as a beneficiary. Her will was admitted to Probate on November 9, 1959. She therein devised all of her property to her sons, Carl N. Chambers, Jr., and Charles A. Chambers. The remainder in the farm involved here was a part of the property belonging to Minnie Chambers at the time of her death. John T. Chambers never at any time before the Minnie Chambers estate was closed filed

any claim against that estate to the effect that he was entitled to a part of her estate by reason of Minnie Chambers' breaching her agreement to name him as a beneficiary in her will. Carl N. Chambers, Jr. died in 1965. He left a will that was admitted to Probate. By his will (Px. 6) he left ½ of his interest in the farm in question to his wife who is a plaintiff in this case, namely, Grace Chambers Killingsworth. Carl N. Chambers, Jr. bequeathed the other ½ of his interest in this farm to his one child, Carl Andrew Chambers, who is also a plaintiff in this case. Carl N. Chambers, Sr. did not die until September 8, 1970. He left a will which was admitted to Probate on September 21, 1970. By the will he bequeathed five of his six children $1.00 each and left all of the rest of his estate to his son, John T. Chambers, the defendant herein.

The deed of May 21, 1941, by which Carl Chambers, Sr. conveyed the remainder in the farm to Minnie Chambers (Px. 5) and the written agreement that those parties entered into on the same date (Px. 11) was a property settlement agreement between those parties (see Px. 14). The parties at that time had separated and were not living together.

In the early 1940s Carl N. Chambers, Sr. began living with Lillian Chambers. They thereafter became the parents of three children, namely, Jo Ann Chambers Skinner, Carol Lee Chambers Smith, and Peggy L. Chambers Noblin. These three women are plaintiffs in this case.

Considerable evidence of probative force was introduced to the effect that in the early 1940s, Carl N. Chambers, Sr. and Minnie Chambers were separated and later divorced; that Carl N. Chambers, Sr. then married Lillian Chambers and had three children by her, namely, Jo Ann Skinner, Carol Lee Chambers Smith and Peggy

Louise Chambers Noblin. These three children were plaintiffs in this case. Charles Chambers testified that after 1940 he did not see much of his father, who paid to his mother, Minnie Chambers, $100.00 a month for the support of Charles. Charles lived with his mother, Minnie, after 1940. His father did not live with Minnie after 1940, because they were divorced. Carl Chambers, Sr. lived with his second wife, Lillian, and his second family in Dallas.

John T. Chambers' first point of error is that the trial court erred in overruling in part his motion for judgment on the verdict, and erred in sustaining in part the motion for judgment non obstante veredicto filed herein by Charles A. Chambers, Carl Andrew Chambers, and Grace Chambers Killingsworth, and erred in disregarding the special issue findings of the jury in answer to Issues Nos. 3-A, 7, 8, 9, 11 and 12.

We overrule that point.

By this point John T. Chambers seeks to set aside the court's action in awarding title to ¼ of the farm to Charles Chambers and another ¼ to Grace Chambers Killingsworth and Carl Andrew Chambers.

John T. Chambers had pleaded that one reason he owned the entire farm involved was because he had acquired the title to it from the other parties to the suit by the 3, 5 and 10 year statutes of limitation.

In answer to Issue No. 3-A, the jury found that John T. Chambers had increased the value of the farm by $50,000.00 by reason of improvements he had put on it prior to November 25, 1970. In answer to Issue No. 7 the jury found that John T. Chambers had either himself, or with Carl N. Chambers, Sr. or through a tenant, held adverse possession of the farm under title or color of title for more than 3 years prior to November 25, 1970. In answer to Issue No. 8 the jury found that John T.

Chambers had either himself, or with Carl N. Chambers, Sr. or through a tenant, held adverse possession of the farm, paid taxes thereon, while claiming it under a deed, or deeds, duly registered for a period of 5 years prior to November 25, 1970. In answer to Issue No. 9 the jury found that John T. Chambers, either himself, or with Carl N. Chambers, Sr. or through tenants, had held adverse possession of the farm for 10 years or more prior to November 25, 1970. In answer to Issues Nos. 11 and 12 the jury found that all of the plaintiffs knew that John T. Chambers was claiming the farm adversely to them. Those issues were submitted in connection with John T. Chambers' claim that he had acquired limitation title to the farm.

In rendering the judgment the trial court stated that he did disregard the jury's answers to Issues Nos. 3-A, 7, 8, 9, 11 and 12.

We recognize that it would not be proper to grant a motion for judgment non obstante veredicto on the ground that the jury's answers to certain issues are against the overwhelming weight and preponderance of the evidence. Travelers Insurance Company v. Sides, 403 S.W. 2d 519 (Tex. Civ. App., Dallas, 1966, ref., n.r.e.).

Rule 301, T.R.C.P., is the rule that authorizes the granting of judgments non obstante veredicto and it provides that a trial court can render a judgment non obstante veredicto in instances where a directed verdict would have been proper and can disregard any special issue jury finding that has no support in the evidence.

We hold that a directed verdict would have been proper denying John T. Chambers' claim to the farm based on limitation title.

By virtue of the May 21, 1941, separation agreement (Px. 11), and the deed executed in connection therewith (Px. 5), Carl N. Chambers, Sr. became the owner of a

life estate in the farm and Minnie Chambers became the owner of the remainder therein.

Carl Chambers, Sr. throughout his lifetime recognized this separation agreement as being valid and binding and that after it was made he had only a life estate in the property (Px. 14).

The record shows that Carl N. Chambers, Sr. had the exclusive possession of the farm from 1941 until 1963 or 1964. On June 1, 1963, Carl N. Chambers, Sr. wrote the following letter (Dx. 2) and delivered it to John T. Chambers:

"Dallas, Texas
"Monday June 1st 1963

"To Whom it May Concern

"I here by transfer and assign the lease on the farm near Mansfield Texas signed by C Melvin Hight to my son John T. Chambers consisting of the rent and benefits of the lease signed by myself and Mr C Melvin Hight

"Carl N. Chambers

"P.S. This will give you authority to look after the land covered by said lease and terminate, increase rent and collect rent from above date
"6-1-63

"Carl N. Chambers"

On May 13, 1964, Carl N. Chambers wrote and delivered the following letter (Dx. 3) to John T. Chambers:

"6438 Anita St.
"Dallas, Texas
"May 13, 1964

"Mr. John T. Chambers
"6320 Richmond #1
"Dallas, Texas 75214

"Dear Son,

"I am enclosing a copy of a letter which I have written and mailed to Mr. J.W. Jarvis, Rt. 1 Mansfield, Texas, who occupies the east part of the Mansfield Farm.

"It is my intention hereby to turnover the possession of said farm to you, and I hereby put you in possession with power to collect all rent, and to look after said Farm as if it were your own.

"Above letter and transfer is made in consideration of love and affection; and other valuable considerations.

"Very truly yours,
/s/"Carl N. Chambers
"Carl N. Chambers"

Enclosed with that letter was (Dx. 4) which was a copy of a letter Carl N. Chambers, Sr. had sent to the farm tenant:

"6438 Anita St.
"Dallas, Texas 75214
"May 13, 1964

"Mr. J.W. Jarvis
"Rt. 1
"Mansfield, Texas

"Dear Mr. Jarvis,

"I am turning the property and the management of the property described in your lease over to my son, John T. Chambers, 6320 Richmond, #1 Dallas, Texas 75214, for future management and attention. Please get in touch with him when ever necessary. Please consider this as an written amment to our existing lease.

"Very truly yours,
/s/"Carl N. Chambers
"Carl N. Chambers, Lessor."

John T. Chambers testified that in about 1965 he took over complete possession of the farm. His take-over of possession of the farm was with the consent of his father and under authority of the letters (Dx. 2 and Dx. 3) above referred to. John T. Chambers, as late as August, 1968 was recognizing this 1941 separation agreement made between his mother and father as being valid and that it created in his father the life estate as provided for in Px. 5 (Dx. 40). In that exhibit (a letter he wrote to Texas Electric Service Co.), he stated: "I hold an assignment of my father, Carl N. Chambers, Sr.'s Life Estate in the above captioned property (referring to the farm)." In the letter he was warning them about trespassing on the farm without his permission. John T. Chambers also admitted while testifying during the trial that his father only had a life estate in the farm and that his father

conveyed that life estate to John in 1963 (SF 159 and SF 176).

Where a husband and wife have actually separated, or are in the act of separating, they may partition between themselves the community property and such partition will be upheld, if entered into without coercion or undue influence and where the agreement is fair. Corrigan v. Goss, 160 S.W. 652 (Tex. Civ. App., El Paso, 1913, writ ref.), and McDonald v. Stevenson, 245 S.W. 777 (Tex. Civ. App., Beaumont, 1922, writ ref.).

Statutes of limitation do not begin to run in favor of one in possession of land against an interest in the land that one owns as a remainderman, subject to a life estate in another, until the death of the life tenant. This is because the remainderman has no right to possession of the property until the life estate terminates, and a cause of action in the remainderman's favor for the possession of the land would not accrue until the life estate ends. Hensley v. Conway, 29 S.W. 2d 416 (Tex. Civ. App., Eastland, 1930, no writ hist.); Gibbs v. Barkley, 242 S.W. 462 (Tex. Com. App., 1922); Evans v. Graves, 166 S.W. 2d 955 (Tex. Civ. App., Dallas, 1942, ref. want merit); Pool v. Sneed, 173 S.W. 2d 768 (Tex. Civ. App., Amarillo, 1943, ref. want merit); Collett v. Collett, 217 S.W. 2d 60 (Tex. Civ. App., Amarillo, 1948, ref., n.r.e.); Ferguson v. Johnston, 320 S.W. 2d 906 (Tex. Civ. App., Texarkana, 1959, ref., n.r.e.); Olsen v. Grelle, 228 S.W. 927 (Tex. Com. App., 1921).

It is also settled that the possession of a life tenant or of one acquiring the life tenant's interest is not adverse to the remainderman. Wells v. Hilburn, 98 S.W. 2d 177 (Tex. Com. App., 1936); Nussbaum v. Mussbaum, 292 S.W. 189 (Tex. Com. App., 1927); and Evans v. Graves, 166 S.W. 2d 955 (Tex. Civ. App., Dallas, 1942, ref. want merit).

One of the claims urged herein by John T. Chambers was that he acquired the life estate of his father, Carl. N. Chambers, Sr. in the farm by virtue of Dx. 2 and Dx. 3 above set out. He contended that those instruments effected an assignment to him of his father's interest in the property.

We hold that when the rules above announced are applied to the facts of this case the plaintiffs were entitled to an instructed verdict as to John T. Chambers' claim to title to the farm by limitations.

Until her death in 1959, Minnie Chambers owned the remainder in the farm, subject to the life estate of Carl N. Chambers, Sr. On the death of Minnie Chambers in 1959 the devisees in her probated will acquired ownership of that remainder interest. From 1941 until 1965 Carl Chambers, Sr., the life tenant, had possession of the farm. Carl Chambers, Sr. transferred the right to possession of the farm to defendant, John T. Chambers and he had possession of the farm from 1965 to the time of trial of this case. All of the remainder interests in the land involved here were subject to a life estate for the life of Carl Chambers, Sr. That life estate did not end until Carl Chambers, Sr. died on September 8, 1970.

Under the holdings of the cases cited the possession of the farm by Carl N. Chambers, the life tenant, was at no time an adverse possession in so far as the remaindermen were concerned. The possession of John T. Chambers which began in about 1965 did not become an adverse possession as against those remaindermen until September 8, 1970, the date of the death of the life tenant. On that date the remaindermen's right to the immediate possession accrued. Limitations did not start to run in favor of John T. Chambers and against the plaintiffs, who were remaindermen, until September 8, 1970. The undisputed evidence shows that the plaintiffs

filed this suit for a partition of the property on November 25, 1970. Limitations stopped running against the remaindermen on November 25, 1970, the day they sued John T. Chambers for a partition.

From the above it is apparent that there was no evidence of probative force to support the jury's answers to Special Issues Nos. 7, 8, and 9 wherein the jury found that John T. Chambers and his father had held adverse possession of the farm long enough to put title in him under the 3, 5 and 10 year limitation statutes. The record shows that he only had the adverse possession that is required by the law in order to mature a limitation title for a period of less than three months before the plaintiffs sued him.

For the reasons stated an instructed verdict in favor of the remaindermen would have been proper and the trial court was correct in disregarding the jury's answers to Issues Nos. 7, 8, 9, 11 and 12. Issues 11 and 12 would have been material only if John T. Chambers had had the required periods of adverse possession.

In answer to Issue No. 3-A the jury found that the value of the farm had been enhanced by $50,000.00 by reason of improvements John T. Chambers put on it prior to November 25, 1970. The judgment stated that the trial court disregarded that finding.

The record shows that John T. Chambers was in possession of the farm by virtue of the fact his father, the life tenant, had transferred the right of possession and management of the farm to him. He had no greater rights in the property than his transferor, the life tenant, had.

In the case of Clift v. Clift, 10 S.W. 338 (Tex. Sup., 1888), the court held that the life tenant cannot recover from the remainderman compensation for improvements that he places on the property. The court said at page 340:

"During life he is entitled to the use and enjoyment of the property; but upon his death the remainder-man's right to its enjoyment, free from any incumbrances, immediately attaches. This right the latter would not have if the tenant for life were permitted to place improvements upon the property at will, for which he could be required to pay upon entering into the estate."

Because of the rule announced in the Clift case, supra, the plaintiffs were entitled to an instructed verdict in their favor on the claim of John T. Chambers wherein he seeks to recover for improvements he made on the land. The trial court did not err in disregarding the jury's answer to Issue No. 3-A for the reasons stated.

There are other reasons why the trial court's action in disregarding the jury's answers to Issues Nos. 7 and 8 were proper.

Issue No. 8 inquired whether John T. Chambers held adverse possession of the farm claiming it under a deed or deeds duly registered for any consecutive period of 5 years before November 25, 1970. The jury's answer was yes. We hold that there was no evidence of probative force in the record to support that jury finding because the undisputed evidence shows that John T. Chambers has never at any time had a deed or deeds that was duly registered under which he claimed the title to the land. Such a deed was necessary in order to acquire title by limitations under the 5 year statute. His claim to the land was by virtue of the two letters, Dx.2 and Dx.3.

Issue No. 7 inquired whether John T. Chambers held adverse possession of the farm under title or color of title for a period of 3 years prior to November 25, 1970. The jury's answer was yes. We hold that there was no evidence of probative force in the record to support that finding because the undisputed evidence showed that John T. Chambers at no time prior to September 8,

1970 held adverse possession of the farm under title or color of title for the statutory period. Art. 5508, V.A.C.S. provides: "By the term 'title' is meant a regular chain of transfers from or under the sovereignty of the soil, and by 'color of title' is meant a consecutive chain of such transfers down to such person in possession, ..." This is another reason why the court properly disregarded that jury finding.

An instructed verdict would have been proper against John T. Chambers' claims under both the 3 and 5 year limitation statutes for the reasons just referred to.

By the jury's answers to Issues Nos. 11 and 12 they found that all the plaintiffs knew that John T. Chambers was claiming the Mansfield Farm adversely to them.

The trial court's action in disregarding the jury's answers to those two issues was proper because under the undisputed facts of this case the plaintiffs were entitled to an instructed verdict on all of John T. Chambers' claims of limitations title.

A case that establishes the fact that the jury's findings on Issues Nos. 11 and 12 are wholly immaterial under the undisputed facts of this case is Evans v. Graves, 166 S.W. 2d 955 (Tex. Civ. App., Dallas, 1942, ref. want merit), wherein in the court said at page 959: " . . . since the owner of the present estate is entitled to possession and the owner of the future estate is not, no adverse possession by the former against the latter is possible until the future interest becomes a present interest. *It is immaterial that the present owner claims a larger interest under color of title, or informs the future owner that he claims an estate in fee simple absolute, or does both.* The statutory period commences to run against the owner of the future estate as soon as such estate becomes a present interest, ... ' " (Emphasis supplied.)

John T. Chambers' second point of error is that the

trial court erred as a matter of law in overruling his motion to disregard the jury's answer to Issue No. 13. The jury found in answer to that issue that the 14.62 acres of land shown by State's Exhibit No. 1 was not included in the description of the B.R. Abbott Survey as shown by State Exhibit No. 74.

We overrule that point of error.

In Strong v. Sunray DX Oil Company, 448 S.W. 2d 728 (Tex. Civ. App., Corpus Christi, 1969, ref., n.r.e.), the court said the following at page 743: "For a tract of land to be vacant it must be unsurveyed public land and it must not be in conflict on the ground with lands previously titled, awarded or sold."

Based on the jury's answer to Issue No. 13 the trial court decreed that the 14.767 acre tract in controversy between the State and John T. Chambers was a vacancy and awarded the title to that tract to the State of Texas.

It is the part of the judgment making that award to the State that John T. Chambers seeks to set aside by means of his second point of error.

On this vacancy issue, Mr. John Baker, an experienced land surveyor, testified for the State and the testimony of the defendant, John T. Chambers, was offered in rebuttal of Mr. Baker's testimony.

We hold that Mr. Baker's testimony was sufficient to support the jury's answer to Issue No. 13 and that the trial court did not err in refusing to disregard the jury's answer to that issue.

RE THE CROSS POINTS URGED BY THE APPELLEE, CHARLES A. CHAMBERS

Charles A. Chambers, a plaintiff below and an appellee here, has filed two cross-points by which he contends that the trial court erred in rendering that part of

the judgment which awarded John T. Chambers a ¼ interest in the farm individually and another ¼ interest in his capacity as independent executor of the estate of Carl N. Chambers, Sr.

The other two appellees, Grace Chambers Killingsworth and Carl Andrew Chambers, do not join Charles A. Chambers in urging those two cross-points and they make no attack on the part of the decree that was rendered in favor of John T. Chambers in the two capacities in which he is involved in this suit.

The position of John T. Chambers is that by filing the notice of appeal in the form indicated early in this opinion he limited the scope of the appeal to a determination of whether or not the trial court erred in rendering only the part of the judgment that awarded a ½ interest in the farm to the three appellees, Charles A. Chambers, Carl Andrew Chambers and Grace Chambers Killingsworth. His position is that before Charles A. Chambers would be entitled to urge his two cross-points seeking to set aside the part of the judgment that is in favor of John T. Chambers he would have had to perfect an appeal himself. The record is undisputed that Charles A. Chambers did not give notice of appeal nor file an appeal bond.

As to these cross-points, we sustain the contention of John T. Chambers.

Rule 353(c) is as follows: "No attempt to limit the scope of an appeal shall be effective as to a party adverse to the appellant unless the severable portion of the judgment from which the appeal is taken is designated in a separate notice served upon such adverse party and filed with the clerk within fifteen days after judgment or order overruling motion for new trial is rendered."

In the notice of appeal filed with the clerk, John T. Chambers made it clear that he gave notice of appeal from only that part of the judgment that was rendered against

him. We hold that the part of the judgment that John T. Chambers gave notice of appeal from was severable from the part of the judgment that awarded the other ½ of the farm to him.

The judgment in this case was signed on October 30, 1974. John T. Chambers filed on the 4th day of November, 1974, in the District Clerk's office a written notice of appeal limiting the appeal to the part of the judgment that was rendered against him. On the copy of this notice of appeal filed in the clerk's office was a certificate by the attorney for appellant that on the 1st day of November, 1974, he had mailed copies of the notice limiting the appeal to the attorneys of all the parties.

We hold that by taking the steps referred to John T. Chambers complied with Rule 353(c), and the appeal he perfected was limited to an appeal from only that part of the decree that was in favor of appellees. See Harms Marine Service, Inc. v. Swiere, 411 S.W. 2d 602 (Tex. Civ. App., Beaumont, 1966, ref., n.r.e.).

With the record in the state referred to, Charles A. Chambers is not entitled to urge his two cross-points to this Court, because he did not perfect an appeal of his own. Connell Construction Co. v. Phil Dor Plaza Corp., 310 S.W. 2d 311 (Tex. Sup., 1958).

In Shepherd v. City of Austin, 467 S.W. 2d 611 (Tex. Civ. App., Austin, 1971, ref., n.r.e.), the Court held that a court of civil appeals does not have jurisdiction of an attempted appeal unless the record shows that notice of appeal was given in one of the two manners provided by Rule 353.

In connection with the matters raised by the two cross-points filed herein by the plaintiff, Charles A. Chambers, a review of the record readily reveals why the trial court rendered the part of the decree that awarded ¼ of the farm to John T. Chambers, individually and

another ¼ of it to him as independent executor of the estate of Carl N. Chambers, Sr., deceased.

The trial pleading of Charles A. Chambers and the other plaintiffs was their second amended original petition (Tr. 2 - 5). It was filed January 16, 1974. On June 18, 1974, the attorney of record for the plaintiff, Charles A. Chambers, also filed what he called his first trial amendment. By that pleading Charles A. Chambers adopted as his pleading all of the allegations in plaintiffs' second amended petition. (See Tr. 227).

In those pleadings Charles A. Chambers admitted that he was entitled to only ¼ of the farm. The court's decree awarded him the ¼ interest he asked for. His pleadings also stated that John T. Chambers owned ¼ of the farm and the trial court's decree was to that effect. Charles A. Chambers now seeks to complain of the court's action in awarding John T. Chambers that ¼ interest. The effect of the plaintiffs' other allegations were that after Minnie Chambers' death in 1959, Carl N. Chambers, Sr., owned a ¼ interest in the farm. The jury found in effect in answer to Special Issue No. 2 that the deed (Px. 22) whereby Carl N. Chambers, Sr. appeared to convey this ¼ interest to his three daughters was a forgery. The trial court therefore concluded that the Carl N. Chambers, Sr. estate still owned that ¼ interest and awarded it to the executor of the Carl N. Chambers, Sr. estate.

Actually the complaints made in Charles A. Chambers' two cross-points are of the court's actions in rendering judgment according to the way he, in his pleadings, had alleged that it should be rendered.

The part of the decree appealed from by John T. Chambers is affirmed. The attempted appeal by Charles A. Chambers from the part of the decree that was in favor of John T. Chambers in both capacities is dismissed.

/s/ Harris Brewster

Harris Brewster

Associate Justice

Not for publication
Rule 452.

APPENDIX "C"

CLERK'S OFFICE - SUPREME COURT

Austin, Texas

Dear Sir: July 21, 1976

You are hereby notified that the Application for Writ of Error in the case of B-6029, Charles A. Chambers v. John T. Chambers et al. (both applications)

was this day refused. No reversible error.

Very truly yours,

GARSON R. JACKSON,
Clerk

APPENDIX "D"

CLERK'S OFFICE - SUPREME COURT

Austin, Texas,

Dear Sir: August 4, 1976

You are notified that the two Motion for Rehearing in the case of Charles A. Chambers
B-6029 VS.
JOHN T. CHAMBERS, ET AL.
was this day filed.

Very truly yours,

GARSON R. JACKSON,
Clerk.

APPENDIX "E"

CLERK'S OFFICE - SUPREME COURT

Austin, Texas,

Dear Sir: Sep. 29, 1976

You are notified that the Motion for Rehearing in the case of B-6029, Charles A. Chambers v. John T. Chambers et al. (both motions)
was this day overruled.

Very truly yours,

GARSON R. JACKSON,
Clerk

APPENDIX "F"

1. 28 U.S.C.A., Section 1257(3)

"(3) By writ of Certiorari, where the validity of a treaty or statute of the United States is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specifically set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States..June 25, 1948, c.646, 62 Stat. 949."

2. Article 1, Section 15, Constitution of the State of Texas

"Sec. 15. The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency. Provided, that the Legislature may provide for the temporary commitment, for observation and/or treatment of mentally ill persons not charged with a criminal offense, for a period of time not to exceed ninety (90) days, by order of the County Court without necessity of a trial by jury. As amended Aug. 24, 1935."

3. Article V. (Amendment) to the United States Constitution

"No person shall be held to answer for a capital or other infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

3. Article XIV, Section 1, Amendments, United States Constitution

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

5. Rule 452, Texas Rules of Civil Procedure, V.A.T.S.

"Opinions of the Courts of Civil Appeals shall be as brief as practicable, and shall avoid as far as possible lengthy quotations from other decisions or texts; and where the issues involved have been clearly settled by authority or elementary principles of law, the court shall write only brief memorandum opinions. In every case where application for writ of error is unqualifiedly refused or is granted, the opinion shall be ordered published; in other cases opinions shall be ordered not published when they present no question or application of any rule of law of interest or importance to the jurisprudence of the State. As amended by Order of June 16, 1943, effective December 31, 1943."

Supreme Court, U. S.
FILED
JAN 24 1977
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1976

NO. 76-~~961~~ 891

JOHN T. CHAMBERS,

Petitioner,

V.

CHARLES A. CHAMBERS,
GRACE CHAMBERS KILLINGSWORTH,
CARL ANDREW CHAMBERS AND
THE STATE OF TEXAS,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT FOR CERTIORARI TO THE SUPREME COURT OF THE STATE OF TEXAS

JOHN L. HILL
Attorney General of Texas

DAVID M. KENDALL
First Assistant Attorney General

SCOTT GARRISON
Assistant Attorney General
P.O. Box 12548, Capitol Station
Austin, Texas 78711
(512) 475-3131

ATTORNEYS FOR
RESPONDENT
THE STATE OF TEXAS

TABLE OF CONTENTS

		Page
I.	STATEMENT	3
II.	CONCLUSION	3
III.	CERTIFICATE OF SERVICE	4

LIST OF AUTHORITIES

	Page
Bankston v. Scott, 216 S. W. 2nd 291 (Tex. Civ. App.-Galveston 1949 rehn den.)	3
Thurman v. Chandler, 81 S. W. 2nd 489 (Comm.-App., Section A, 1935) reversed and remanded	3
Weatherly v. Jackson, 71 S. W. 2nd 259 (Comm.-App., Section B, 1934)	3
Zapeta v. Hoffman, 72 S. W. 443 (Tex. Civ. App. 1903 no writ)	3

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1976

JOHN T. CHAMBERS

Petitioner

VS. No. 76-981

CHARLES A. CHAMBERS,
GRACE CHAMBERS
KILLINGSWORTH,
CARL ANDREW CHAMBERS
AND THE STATE OF TEXAS

Respondents

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TEXAS

Respondent, State of Texas files this opposition to petition for writ of certiorari by petitioner and prays that such petition be denied as to the State of Texas and the 14.767 acre vacancy. Judgment and opinion of the Court of Civil Appeals for the Second Supreme Judicial District sitting at Fort Worth, Texas was entered on March 19, 1976. Motion for a rehearing was duly filed and overruled on the 16th day of April, 1976. Application for Writ of Error was filed with the Supreme Court of Texas and such application for Writ of Error for John T. Chambers was refused, no reversal error on July 21, 1976. Motion for a rehearing was duly filed and was overruled on September 29, 1976.

Respondent, State of Texas will address only those portions of the Brief in Petition for Writ of Certiorari which concern and are pertaining to the 14.767 acres claimed by the State of Texas for the reason that said

portion was never patented out of the State of Texas and therefore constitutes a vacancy. The portion of the judgment awarding the vacancy to the State of Texas is here quoted:

> "IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the State of Texas, by and through the Texas General Land Office, be and it is HEREBY AWARDED title and possession as prayed for in its Third Amended Original Answer and Counterclaim to the following described property which was never patented or severed from the State, to-wit:
>
> BEGINNING at the Northwest Corner of the Effie G. Rumph Survey, Abstract 2042;
>
> THENCE South 0 degrees 27 Minutes West 111.65 varas along West line of said E. G. Rumph to the Southwest Corner of Rumph Survey, a point in the North line of the B. R. ABBOTT SURVEY, Abstract 13;
>
> THENCE South 89 degrees 49 Minutes West 733.9 varas along the North line of said B. R. ABBOTT SURVEY to an "L" Corner of said Survey;
>
> THENCE North 0 degrees 14 Minutes East 115.77 varas along the most Northerly East Line of the B. R. ABBOTT SURVEY to a point in the South line of the Davie Russell Survey, Abstract 1323;
>
> THENCE South 90 degrees 52 Minutes East 733.46 varas along the South Line of said David Russell Survey to the place of BEGINNING and containing 14.767 acres of land, more or less."

STATEMENT

The jury found by their answer to Special Issue No. 13 that the 14.767 acres claimed to be a vacancy was not included within the description of the B. R. Abbott Survey. Thus title to that part of the B. R. Abbott Survey was never granted to claimants, and is now awarded to the State of Texas as shown by the above portion of the Judgment. The judgment as to the vacancy is in accordance with the jury's answer to Special Issue No. 13.

The jury's decision is decisive upon a question and the jury can give credence to testimony of one witness over that of another. *Thurman v. Chandler*, 81 S. W. 2nd 489 (Comm.App., Section A, 1935) reversed and remanded; *Bankston v. Scott*, 216 S. W. 2nd 291 (Tex. Civ. App.-Galveston 1949 reh. den.).

The question of adverse possession which arose between the other parties to the lawsuit had no bearing as to the state's claim of vacancy for the 14.767 acre tract. The rule that an individual cannot hold adversely against the State is basic. *Zapeta v. Hoffman*, 72 S. W. 443 (Tex. Civ. App. 1903 no writ) *Weatherly v. Jackson*, 71 S. W. 2nd 259 (Comm.App., Section B, 1934).

In conclusion, Respondent State of Texas urges that the decision of the jury to Special Issue No. 13 and the judge's rendition of judgment in accordance with same are entirely proper. Respondent prays that petition for Writ of Certiorari be denied as to the State of Texas and the 14.767 acre vacancy.

Respectfully submitted,

JOHN L. HILL
Attorney General of Texas

DAVID M. KENDALL
First Assistant Attorney General

SCOTT GARRISON
Assistant Attorney General
P.O. Box 12548, Capitol Station
Austin, Texas 78711
(512) 475-3131

ATTORNEYS FOR
RESPONDENT
THE STATE OF TEXAS

CERTIFICATE OF SERVICE

I, Scott Garrison, Assistant Attorney General of Texas hereby certify that a true and correct copy of the foregoing Brief In Opposition To Petition For Writ For Certiorari To The Supreme Court Of The State Of Texas has been deposited in the U.S. Mail, Certified, Return Receipt Requested, on this the ____day of January, 1977 to the following:

Phillip R. Russ
621 Meadows Building
Dallas, Texas 75206

William C. Odeneal, Jr.
621 Meadows Building
Dallas, Texas 75206

Oscar E. Reed, Esq.
12903 Tosca
Houston, Texas 77024

G.P. Reddell, Jr., Esq.
612 Sixth Avenue North
Texas City, Texas 77590

Obel L. McAlister, Esq.
3613 Overton Park East
Fort Worth, Texas 76109

Gerald Summerford, Esq.
200 West Belknap
Fort Worth, Texas 76102

William M. Jones, Esq.
1505 Elm Street
Dallas, Texas 75201

DATED AND SIGNED this ____ day of January, 1977 at Austin, Texas.

SCOTT GARRISON

Supreme Court, U. S.
FILED
JAN 26 1977
MICHAEL RODAK, JR., CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1976

No. 76-891

JOHN T. CHAMBERS, *Petitioner*

v.

CHARLES A. CHAMBERS, GRACE CHAMBERS KILLINGSWORTH, CARL ANDREW CHAMBERS AND THE STATE OF TEXAS, *Respondents.*

Opposition to Application for Writ of Certiorari to the Supreme Court of the State of Texas, Filed by Petitioner John T. Chambers

---

OBEL L. McALISTER
3613 Overton Park East
Fort Worth, Texas 76109

Fort Worth Brief Printing Co., 610 S. Jennings Street Phone ED 2-4070

INDEX

Page

Statement of Opposition 1

Jurisdiction 1

Argument and Authorities 2

Conclusion 5

Certificate 6

Appendix A
Statutes A-1

TABLE OF AUTHORITIES

Cases *Page*

PORTER v. WILSON,
SUPREME COURT OF TEXAS 389 SW(2) 650 3

POENISCH v. QUARNSTROM,
SUPREME COURT OF TEXAS 361 SW(2) 367 3

NUSSBAUM v. NUSSBAUM,
COMMISSION OF APPEALS OF TEXAS 292 SW 189 .. 4

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1976

No. 76-891

JOHN T. CHAMBERS, *Petitioner*

v.

CHARLES A. CHAMBERS, GRACE CHAMBERS KILLINGSWORTH, CARL ANDREW CHAMBERS AND THE STATE OF TEXAS, *Respondents.*

Opposition to Application for Writ of Certiorari to the Supreme Court of the State of Texas,

Filed by Petitioner John T. Chambers

Now Come Grace Chambers Killingsworth and Carl Andrew Chambers and file this opposition to John T. Chambers' petition for a Writ of Certiorari. Petitioner's statement as to the history of the case is substantially true.

The opinions of the Texas Courts are correctly reported.

JURISDICTION

Under the laws of the State of Texas the trial judge has the discretion and power to grant a motion for Judgment Non-Obstante Verdicto. Especially is this

true when a jury disregards all evidence of probative force and answers questions submitted in a manner not supported by the evidence.

Under the facts in this case there is no Federal question involved and neither was there any denial of due process to petitioner. It is, therefore, the opinion of these opponents that this Honorable Court does not have jurisdiction of this case.

ARGUMENT AND AUTHORITIES

The facts in this case will not support the contentions of Petitioner. There was nothing in the record to support his claim under the three (3) or five (5) year statute of limitations (Articles 5507, 5508, and 5509, Vernon's Annotated Texas Statutes Appendix "*A*"), because there was no instrument introduced into evidence to support such claim. There was no deed or deeds duly registered for a consecutive period of five (5) years prior to November 25, 1970, the date suit was filed to partition the property. Since no deed was recorded in the Deed Records of Tarrant County, Texas, there was no evidence of probative force to support the jury finding on the five (5) year limitation statute. The same is true of the three (3) year statute of limitations. Article 5508 defines color of title and our courts hold that it also means a deed. Petitioner admitted in his oral testimony that he did not have a deed that was duly recorded.

The ten (10) year statute of limitations (Article 5510, Vernon's Annotated Texas Statutes, Appendix "*A*") was not applicable for the reason that by his own testimony he, the Petitioner, had not been in possession of the property for ten (10) years prior to the death of the life tenant and the filing of the partition suit.

Petitioner by his own testimony, when he testified that his father held the property under a life estate, and his letter to Texas Electric Service Co. that he was holding possession under his father's life estate, absolutely and completely barred himself from any claim to the farm by adverse possession. Under these circumstances there is no way under Texas blue sky that he could have been denied due process of law. All of the documentary evidence introduced by Petitioner and those in opposition, were contrary to the oral testimony of the Petitioner.

The Court of Civil Appeals, in its opinion said there was no evidence of probative force to support the jury findings. To support that position we cite *Porter v. Wilson*, 389 SW(2) 650 (Supreme Court) which states:

> "There is no evidence of Probative force in the record to support the findings of the jury that the Wilsons perfected title under the provisions of Article 5510, supra. The trial court erred in failing to grant Porter's motions for an instructed verdict and for judgment non obstante verdicto."

Another Supreme Court case supporting this point is *Poenisch v. Quarnstrom*, 361 SW(2) 367.

As long as Carl N. Chambers, Sr. was living these Respondents had no right to the possession of said

property, therefore, they had no right of action for possession of same. *Hensley v. Conway*, 29 SW(2) 416 and we quote:

> "We have reached the conclusion that this interest was not barred. The statutes of limitation as to an interest in land, which one owns as a remainderman, subject to a life estate in another, do not begin to run in favor of one in possession until the death of the life tenant."

See also the case of *Nussbaum v. Nussbaum*, 292 S.W. 189 (Com. of App.):

> "A life estate in land is separate and distinct from that of the remainder. Because this is true, possession by one holding the life estate is not adverse to one holding title to the remainder. Such possession has reference only to the title of the possessor. It has no reference to the title of one holding the remainder, who has no right of possession until possession held by the life tenant and those holding under him has terminated. For this reason, the possession of the owner of the life estate is not the possession of another who holds title to the remainder. He holds possession which has reference to his own title, and not to the title of another which is separate and distinct from his.
>
> "The relation of life tenant and remainderman is different from that of landlord and tenant. The former hold the same land under separate titles. The latter hold the same land under the same title."

CONCLUSION

The Petitioner ignores the fact that there was no evidence of probative force to support the jury findings. Judge Brewster, of the Court of Civil Appeals, for the Second Supreme Judicial District of Texas, wrote a very sound and strong opinion affirming the trial court. It sets out the state laws on this question very well. Since there is no Federal question involved in this case and no due process denied nor was Petitioner's Constitutional Rights violated in any manner whatsoever, this Petition should be denied.

Respectfully submitted,

Obel L. McAlister
3613 Overton Park East
Fort Worth, Texas 76109
Attorney for Respondents
Grace Chambers Killingsworth
and Carl Andrew Chambers

CERTIFICATE

The undersigned hereby certifies that copies of the foregoing opposition to Petitioner's Applicaton for Writ of Certiorari to the Supreme Court of the State of Texas have this day been served upon counsel of record by depositing same in the United States Mail, postage prepaid, to the following:

Philip R. Russ
621 Meadows Building
Dallas, Texas 75206

Oscar E. Reed
12903 Tosca
Houston, Texas 77024

Scott Garrison
Assistant Attorney General
P. O. Box 12548
Capitol Station
Austin, Texas

William M. Jones
812 Dresser Building
Dallas, Texas 75202

G. P. Reddell, Jr.
612 Sixth Avenue North
Texas City, Texas 77590

Dated and signed this 24 day of January, 1977, at Fort Worth, Texas.

Obel L. McAlister

APPENDIX "A"

All of the following quoted Articles are from Vernon's Annotated Texas Statutes:

Article 5507. Three years possession.

"Suits to recover real estate, as against a person in peaceable and adverse possession thereof under title or color of title, shall be instituted within three years next after the cause of action accrued, and not afterward. Acts 1841, Page 119; P.D. 4622; G.L., Volume 2, Page 621."

Article 5508. Color of Title.

"Color of title is meant a consecutive chain of such transfers down to such person in possession, without being regular, or duly registered, as if one or more of the memorials or muniments be not registered, or be only in writing, or such like defect as may not extend to or include the want of intrinsic fairness and honesty; or the party hold under a head right."

Article 5509. Five years possession.

"Every suit to recover real estate as against a person having peaceable and adverse possession thereof, cultivating, using or enjoying the same, and paying taxes thereon, if any, and claiming under a deed or deeds duly registered, shall be instituted within five years next after cause of action shall have accrued, and not afterward. This Article shall not apply to one in possession of land, who deraigns title through a forged deed. And no one claiming under a forged deed, or deed executed under a forged power of attorney, shall

be allowed the benefits of this Article, Id., Acts 1879, Page 132; G.L., Volume 8, Page 1132."

Article 5510. Ten years possession.

"Any person who has the right of action for the recovery of lands, tenements or hereditaments against another having peaceable and adverse possession thereof, cultivating, using or enjoying the same, shall institute his suit therefor within ten years next after his cause of action shall have accrued, and not afterward. The peaceable and adverse possession contemplated by this Article, as against the person having right of action, shall be construed to embrace not more than 160 acres, including the improvements or the number of acres actually enclosed, should the same exceed 160 acres; but when such possession is taken and held under some written memorandum of title, other than a deed, which fixes the boundaries of the possessor's claim and is duly registered, such peaceable possession shall be construed to be co-extensive with the boundaries specified in such instrument. ID., P.D. 4621-24."